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**To:** Microsoft ATR  
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**Subject:** Microsoft Settlement

As a concerned citizen it boggles my mind that the DoJ can even think that the current proposed settlement with regards to Microsoft's illegal use of a monopoly has even a chance at terminating that illegal monopoly and denying the defendants the illegally acquired market dominance that they have obtained. This proposal doesn't even take any direct measures to reduce the Applications Barrier to entry faced by any new entrant into the markets that Microsoft has already monopolized.

The court of appeals confirmed that Microsoft has a monopoly on x86 based PC OS's, and that the company's market position is protected by a serious barrier to entry, as well as that Microsoft was liable under the Sherman Act for maintaining its monopoly via licensing restrictions placed on OEM's IAP's, ISV's and Apple Computer (re: JVM.)

From these practices, licensing, etc Microsoft managed to strengthen the barrier to entry into its markets and weakened its competition (those that weren't put out of business.) Doesn't the judgement have to find a direct way to reduce those barriers to entry and increase competition to be meaningful?

Some examples of problems with the PFJ.

Section III.A.2 allows Microsoft to retaliate against any OEM that ships Personal Computers containing a competing Operating System but no Microsoft operating system. Basically this lets Microsoft impose a PC tax on everybody who buys computers from large OEM's since no large OEM can afford to ship all their machines without windows on it.

Section III.B allows Microsoft to do anything they want to smaller OEM's. Don't the small OEM's deserve the same protection as the 20 largest? Is there something special about being 20th vs 21st? This section must give the same protection to all OEM's regardless of size. Also this section would allow Microsoft to continue leveraging its monopoly by offering "Market Development Allowances" (basically a discount) to OEM's based on the number of copies of X product sold by that OEM.

Sections III.F and III.G don't put an end to several of Microsoft's exclusionary practices towards ISV's. The Microsoft Windows Media Encoder 7.1 SDK EULA doesn't allow it to be distributed with any software that contains, or is derived in any manner (in whole or in part) from any software that is distributed as free software, open source software or similar licensing or distribution models. The EULA goes on to list anything licensed under GPL, LGPL, Artistic License, Mozilla Public

License, Netscape Public License, Sun Community Source Public License.

Should Microsoft be able to dictate that anyone who uses this piece of their software cannot also distribute other software? Almost every Windows API is shipped as an add-on SDK with associated redistributable components. Anything that wishes to use that API is effectively banned by the EULA from utilizing any free software and this penalizes all companies that chose to use Open Source as a method to distribute their program. This also harms products like Netscape 6 and StarOffice.

On top of this the Microsoft Platform SDK makes it illegal to run programs generated by Microsoft Visual C++ on a non Microsoft Windows-compatible operating system.

We should also regulate how Microsoft licenses its products to non OEM's. This includes site licenses or "enterprises" and "enterprise licensing" as well as end user consumer licensing. Most of the "enterprise license" agreements have a strong semblance to per-processor licenses which were prohibited by the 1994 consent decree, in which Microsoft gets money for every computer that could possibly run a Microsoft OS not just the ones that are running it. These agreements are anticompetitive because they remove the financial incentive for individuals or departments to run non Microsoft software since you already have to pay for it. It's like insisting that everybody that has a car buy 4 Goodyear tires, even if you want to use somebody else's tires the Goodyear tires are paid for and you have to pay for them. How many people do you think would go buy the Pirelli tires then? The same is true with these licenses. End user license issues can be shown from MSNBC's NewsAlert software, which has a EULA which says "MSNBC Interactive grants you the right to install and use copies of the SOFTWARE PRODUCT on your computers running validly licensed copies of the operating system for which the SOFTWARE PRODUCT was designed [e.g., Microsoft Windows(r) 95; Microsoft Windows NT(r), Microsoft Windows 3.1, Macintosh, etc.]. This makes it illegal to try running the software under WINE for instance which can run some windows programs under Linux. Yet the EULA states that this is illegal, hence the only legitimate way to use this software is to own a copy of Microsoft Windows of some form - they mention Macintosh, yet there isn't a mac version of this software.) Isn't this practice anticompetitive?

Why has no court fully examined information from the 1996 Caldera vs Microsoft antitrust suit, which clearly showed that there was sufficient evidence that Microsoft intentionally created incompatibilities in their Windows 3.1 product to discourage competition.

I think for the final judgement to be in the public's best interest we need to have the following.

- 1) ALL Microsoft API's, software hooks, etc must be public, and must be given to the public at least 6 months prior to release.

- 2) All Microsoft file formats must be also given to the public 6 months prior to use in a product.
- 3) All OEM's should be under the same restrictions, not just the top 20.
- 4) All Microsoft software licensing must allow for the software to be run on any validly licensed machine regardless of what OS is running on it. If the machine can run the software it shouldn't be prohibited from doing so by a EULA. Basically instead of Windows/Microsoft OS should be any Windows compatible OS.
- 5) Any "middleware" product should be replaceable by another competing "middleware" product. The ability to replace Java with Sun's Java is meaningless after .NET comes about. We must be able to replace .NET with another competing middleware.
- 6) Windows should include ANY machine that uses any part of the Win32 API (including X-Box, Pocket PC, Windows CE, etc.)
- 7) There must be an advance notice requirement with regard to ISV's regarding middleware. As it stands Microsoft could simply change the requirements just before the deadline and not inform the ISV's.
- 8) Competitors must not be prohibited from using the API documentation to build Microsoft compatible Operating Systems.
- 9) Microsoft must be required to list which software patents protect the windows APIs if any. Non disclosure on said patents should be considered the same as the granting of the actual patent to the public domain.
- 10) OEM's must be allowed to ship machines in any number with any OS on them without fear of retaliatory pricing on the part of Microsoft.
- 11) Microsoft discounts should not allow monopoly leveraging in any way shape or form. In other words any discount Microsoft chooses to offer must only be linked to the product being bought, and must be offered to any and every OEM.
- 12) There must be an active and effective enforcement mechanism (one that will also make Microsoft want to fix their problems.) And no a fine of a million dollars a day isn't sufficient. That would be like fining Michael Jordan a dollar a day because of his Nike affiliation. Do you think he'd care about the dollar? Also there must be an effective monitoring system put into place to observe Microsoft's behavior, review all license agreements, review all OEM agreements, etc.

These things are necessary to protect the consumer. Real remedies must be implemented on a company that has blatantly broken the law. Real

insurances must be made that they cannot continue to break the law.

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